

EXHIBIT A
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UNITED STATES DISTRICT COURT
 NORTHERN DISTRICT OF CALIFORNIA
 SAN JOSE DIVISION

COPY

CHASOM BROWN, MARIA NGUYEN, AND) C-20-03664 LHK
 WILLIAM BYATT, INDIVIDUALLY AND)
 ON BEHALF OF ALL SIMILARLY) SAN JOSE, CALIFORNIA
 SITUATED,)
) APRIL 29, 2021
 PLAINTIFF,)
) PAGES 1-44
 VS.)
) **SEALED PROCEEDINGS**
 GOOGLE LLC AND ALPHABET INC.,)
)
 DEFENDANTS.)
 _____)

TRANSCRIPT OF ZOOM PROCEEDINGS
 BEFORE THE HONORABLE LUCY H. KOH
 UNITED STATES DISTRICT JUDGE

A P P E A R A N C E S :

FOR THE PLAINTIFFS: SUSMAN GODFREY LLP
 BY: AMANDA K. BONN
 1900 AVENUE OF THE STARS, SUITE 1400
 LOS ANGELES, CALIFORNIA 90067
 BY: ALEXANDER P. FRAWLEY
 1301 AVENUE OF THE AMERICAS, 32ND FLOOR
 NEW YORK, NEW YORK 10019

APPEARANCES CONTINUED ON NEXT PAGE

OFFICIAL COURT REPORTER: LEE-ANNE SHORTRIDGE, CSR, CRR
 CERTIFICATE NUMBER 9595

PROCEEDINGS RECORDED BY MECHANICAL STENOGRAPHY
 TRANSCRIPT PRODUCED WITH COMPUTER

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APPEARANCES (CONTINUED)

FOR THE PLAINTIFFS:

BOIES SCHILLER FLEXNER LLP

BY: MARK C. MAO

BEKO REBLITZ-RICHARDSON

44 MONTGOMERY STREET, 41ST FLOOR

SAN FRANCISCO, CALIFORNIA 94104

BY: JAMES LEE

100 SE 2ND STREET, 28TH FLOOR

MIAMI, FLORIDA 33131

MORGAN & MORGAN

COMPLEX LITIGATION GROUP

BY: RYAN MCGEE

201 N. FRANKLIN STREET, 7TH FLOOR

TAMPA, FLORIDA 33602

FOR THE DEFENDANT:

QUINN EMANUEL URQUHART & SULLIVAN

BY: ANDREW H. SCHAPIRO

191 N. WACKER DRIVE, SUITE 2700

CHICAGO, ILLINOIS 60606

BY: STEPHEN A. BROOME

VIOLA TREBICKA

865 S. FIGUEROA STREET, 10TH FLOOR

LOS ANGELES, CALIFORNIA 90017

BY: JOMARIE A. CRAWFORD

JOSEF ANSORGE

51 MADISON AVENUE

NEW YORK, NEW YORK 10010

BY: JONATHAN TSE

50 CALIFORNIA STREET, FLOOR 22

SAN FRANCISCO, CALIFORNIA 94111

1 SAN JOSE, CALIFORNIA APRIL 29, 2021

2 P R O C E E D I N G S

3 (SEALED ZOOM PROCEEDINGS CONVENED AT 3:28 P.M.)

4 THE COURT: ALL RIGHT. WE'RE BACK.

5 MS. FANTHORPE, IF YOU'LL CALL US TO ORDER, WE WILL GET
6 UNDERWAY, PLEASE.

7 THE CLERK: CALLING CASE 20-CV-3664, BROWN, ET AL,
8 VERSUS GOOGLE, LLC, ET AL.

9 COUNSEL, PLEASE IDENTIFY YOURSELVES FOR THE RECORD,
10 BEGINNING WITH THE PLAINTIFFS.

11 MS. BONN: GOOD AFTERNOON, YOUR HONOR.

12 AMANDA BONN WITH SUSMAN GODFREY ON BEHALF OF THE
13 PLAINTIFFS. AND I'LL ALLOW MY COLLEAGUES TO INTRODUCE
14 THEMSELVES AS WELL.

15 MR. MAO: GOOD AFTERNOON, YOUR HONOR.

16 MARK MAO, BOIES SCHILLER, FOR THE PLAINTIFFS.

17 MR. RICHARDSON: BEKO RICHARDSON, BOIES SCHILLER
18 FLEXNER, ON BEHALF OF THE PLAINTIFFS. GOOD AFTERNOON.

19 MR. LEE: JAMES LEE, BOIES SCHILLER FLEXNER.

20 MR. MCGEE: GOOD AFTERNOON.

21 RYAN MCGEE, MORGAN & MORGAN, FOR THE PLAINTIFFS.

22 MR. FRAWLEY: AND ALEXANDER FRAWLEY FROM
23 SUSMAN GODFREY FOR THE PLAINTIFFS.

24 MR. SCHAPIRO: I THINK THAT COVERS ALL THE
25 PLAINTIFFS, YOUR HONOR.

1 WE'RE BACK FOR GOOGLE. ANDREW SCHAPIRO, STEVE BROOME,
2 JOSEPH ANSORGE, VIOLA TREBICKA, JOMARIE CRAWFORD, AND
3 JONATHAN TSE.

4 THE COURT: THANK YOU, MR. SCHAPIRO.

5 ALL RIGHT. WE HAVE A NUMBER OF DISCOVERY DISPUTES ON IN
6 THIS MATTER AS WELL. WE WILL NOT GO TOO QUICKLY SO THAT WE CAN
7 HAVE A RECORD, AND WE WILL START, I THINK, WITH THE PERHAPS
8 MOST MEATY OF THE ISSUES, AND I THINK THAT'S DISPUTE NUMBER 2
9 REGARDING -- NO, NO, I GOT THAT WRONG -- DISPUTE NUMBER 6
10 REGARDING CLASS MEMBER IDENTIFICATION FOR WHICH THE PARTIES
11 SUBMITTED A BRIEF ADDITIONAL STATEMENT, IF I'M SEEING THAT
12 CORRECTLY. SO THAT'S WHERE WE'LL START.

13 AS I IDENTIFIED -- AS I UNDERSTAND RFP NUMBER 10, THE
14 PLAINTIFFS ARE -- HAVE REQUESTED DOCUMENTS SUFFICIENT TO
15 IDENTIFY ALL OF THE ALLEGED CLASS MEMBERS, INCLUDING ALL
16 ELECTRONIC AND PHYSICAL ADDRESS INFORMATION ASSOCIATED WITH THE
17 ALLEGED CLASS MEMBERS.

18 AND FOR FRAME OF REFERENCE, THE CLASS IN THIS CASE HAS
19 THE -- CLASSES, PROPOSED CLASSES HAVE THE ELEMENTS OF THE
20 MEMBERS BEING NOT LOGGED INTO THEIR GOOGLE ACCOUNTS AND BEING
21 IN PRIVATE BROWSING MODE.

22 SO WHO'S GOT THE MIC FOR PLAINTIFFS?

23 AND I THINK I UNDERSTAND REALLY WHAT THE ISSUES ARE. I
24 GET VERY QUICKLY TO, WHAT IS IT YOU WANT, AND WITHIN WHAT
25 PERIOD OF TIME?

1 I ALSO NOTE THE PROPOSAL THAT, AT LEAST FOR STARTERS, WE
2 START WITH THE PLAINTIFFS', THAT IS, THE NAMED PLAINTIFFS',
3 DATA.

4 SO WHO'S GOT THE MIC FOR PLAINTIFFS?

5 MS. BONN: THANK YOU, YOUR HONOR. THIS IS
6 AMANDA BONN WITH SUSMAN GODFREY.

7 MARK MAO IS GOING TO ADDRESS ANY, YOU KNOW, NITTY-GRITTY
8 QUESTIONS. I DID WANT TO KIND OF MAKE A COUPLE OF HIGH LEVEL
9 POINTS, ESPECIALLY HEARING THE BENEFIT OF THE CALHOUN ARGUMENT,
10 WHICH WAS RELATED.

11 WHAT DO WE WANT? YES, NUMBER ONE, WE WANT THE DATA FOR
12 THE NAMED PLAINTIFFS. WE THINK THAT'S A GOOD PLACE TO START.

13 AND I THINK THAT THE ISSUE THAT PERCOLATED UP DURING THE
14 CALHOUN HEARING IS DATA THAT GOOGLE DEEMS, QUOTE, AUTHENTICATED
15 BECAUSE THEY TIE IT TO AN INDIVIDUAL'S NAME, NAMED ACCOUNT,
16 VERSUS INFORMATION THAT'S TIED TO A DEVICE.

17 AND GOOGLE MADE SOME ARGUMENTS ABOUT THEIR INTERNAL
18 POLICIES AND HOW THEY SEGREGATE DATA AND, AS A MATTER OF THEIR
19 PRACTICE, THEY DON'T DO CERTAIN THINGS WITH CERTAIN POOLS OF
20 DATA.

21 BUT WE REALLY VIEW THAT AS A MERITS ARGUMENT. THAT MAY BE
22 ONE OF GOOGLE'S DEFENSES THAT WE DISAGREE WITH, BUT WE BELIEVE
23 WE'RE ENTITLED TO ANY DATA THAT GOOGLE HAS COLLECTED THAT WE
24 CAN MAKE AN ARGUMENT IS TIED TO OUR PLAINTIFFS, WHETHER BY NAME
25 OR BY DEVICE OR BY SOME OTHER IDENTIFIER.

1 AND SO I THINK THAT'S REALLY THE CORE ISSUE AND THE CORE
2 DISPUTE.

3 AND WITH THAT, I'LL KIND OF TURN IT OVER TO MR. MAO WHO,
4 YOU KNOW, I THINK IS PREPARED TO KIND OF GIVE A LITTLE MORE
5 DETAIL ON TECHNICALLY WHAT WE'RE ASKING FOR.

6 THE COURT: ALL RIGHT. MR. MAO?

7 MR. MAO: YEAH. GOOD AFTERNOON, YOUR HONOR.

8 SO IN THE PRIOR HEARING, YOUR HONOR, YOU HEARD A LOT
9 ABOUT, YOU KNOW, DISCUSSION ON LOGS. BUT WE BELIEVE THAT
10 DISCOVERY AND DOCUMENTS THAT HAVE BEEN PRODUCED THUS FAR REALLY
11 SHOW THAT GOOGLE ACTUALLY HAS TWO DIFFERENT TYPES OF RECORDS IN
12 TERMS OF ELECTRONIC, QUOTE-UNQUOTE, LOGS.

13 THERE ARE THINGS THAT ARE MORE STRUCTURED, WHICH IS, YOU
14 KNOW, THE CHROME LOGS, GOOGLE ANALYTICS LOGS IN OUR CASE,
15 GOOGLE AD MANAGER LOGS; BUT THEN THERE'S ALSO SOMETHING LESS
16 STRUCTURED IN WHICH YOU DID HEAR THE OTHER TEAM TALK ABOUT,
17 WHICH IS THIS IDEA OF [REDACTED]

18 THE COURT: THE IDEA OF WHAT?

19 MR. MAO: [REDACTED]

20 THERE ARE ALSO REFERENCES TO FOOTPRINTS, WHICH IS REALLY
21 AROUND THE SAME TYPE OF PRODUCT, AND WHAT THESE ARE IS THAT
22 THESE ARE DISTRIBUTED DATABASES, SOMETIMES CALLED DATA LAKES,
23 AND WHAT YOU REALLY HAVE THERE IS YOU BASICALLY HAVE ALL THE
24 LOGS SWIMMING TOGETHER IN A MUCH LESS STRUCTURED WAY. OKAY?

25 SO ALTHOUGH WE ARE HEARING A LOT OF DISCUSSIONS ON THE

1 PROCESSED LOGS, AS YOUR HONOR HAD NOTED, BECAUSE GOOGLE
2 ADMITTEDLY CAN KEY AND DOES KEY THEIR RECORDS TO DEVICES AS
3 MR. -- AS JOSEF OVER AT QUINN, EMANUEL HAD ADMITTED IN THE LAST
4 ARGUMENT, WE BELIEVE WE ARE ABSOLUTELY ENTITLED TO BOTH THE
5 STRUCTURED AND THE LESS STRUCTURED RECORDS FROM GOOGLE STRAIGHT
6 OUT OF [REDACTED]

7 THE REASON WHY WE MENTION [REDACTED] YOUR HONOR, IS BECAUSE
8 DESPITE WHATEVER MERITS ARGUMENTS THEY HAVE, IT IS GOING TO BE
9 UNDISPUTED FROM THEIR OWN RECORDS, WE BELIEVE, THAT SHOWS THAT
10 BASICALLY [REDACTED] IS INTERMINGLING ALL OF THIS DATA IN ORDER TO
11 BEST MANIPULATE AND LEVERAGE THE DATA.

12 AND THE REASON WHY THAT'S IMPORTANT, YOUR HONOR, AND
13 RELEVANT TO THE DISCUSSION THAT YOU JUST HEARD IS THAT THIS
14 IDEA OF AUTHENTICATED VERSUS UNAUTHENTICATED RECORDS IS REALLY
15 JUST TWO DIFFERENT METHODS BY WHICH YOU WOULD KEY, OKAY, OR YOU
16 WOULD LINK THE VARIOUS TYPE OF DATA.

17 WHEN GOOGLE IS SAYING AUTHENTICATED, WE KNOW -- WE DON'T
18 KNOW ALL THE WAYS BY WHICH THEY'RE TALKING ABOUT
19 AUTHENTICATION, BUT WE DO KNOW THEY'RE TALKING ABOUT LOGGING IN
20 IN SOME INSTANCES.

21 WHETHER OR NOT THEY ALSO COUNT LOGGING IN WHEN, FOR
22 EXAMPLE, A CUSTOMER'S CUSTOMER HAS LOGGED IN, A USER HAS LOGGED
23 IN USING, YOU KNOW, LIKE SOMEBODY ON WALL STREET JOURNAL, FOR
24 EXAMPLE, LOGS IN, WHETHER OR NOT THAT'S UNAUTHENTICATED OR
25 AUTHENTICATED IS SOMETHING WHICH WE'RE TRYING TO UNDERSTAND.

1 BUT YOU ALSO, YOUR HONOR, YOU HEARD THE CONCEPT OF TWICE
2 BAKED CRACKERS. WE ACTUALLY BELIEVE THAT THAT'S ACTUALLY A
3 CODE WORD FOR THIS IDEA OF TWICE BAKED BEING THAT GOOGLE WOULD
4 ESSENTIALLY TAKE PARAMETERS, SUCH AS I.P. ADDRESSES AND/OR USER
5 AGENTS, SOMEHOW CODE THAT INTO THE COOKIE WHICH IS BEING
6 DISTRIBUTED, AND THAT BECOMES A WAY IN WHICH YOU WOULD UNIFY
7 THE DIFFERENT RECORDS FROM DIFFERENT PLACES. OKAY?

8 THIS IDEA OF A TWICE BAKED COOKIE IS THE IDEA THAT THERE'S
9 EITHER A COOKIE WITHIN THE COOKIE, OR THIS COOKIE IS SOMEHOW A
10 PERMUTATION OF THE COOKIES THAT HAVE BEEN DISTRIBUTED OUT
11 THERE.

12 WE BELIEVE THAT WE'RE ENTITLED TO EXPLORE THAT, AND WE
13 BELIEVE THAT THE EVIDENCE AND DOCUMENTS WHICH HAVE BEEN
14 PRODUCED THUS FAR CERTAINLY DEMONSTRATES THAT AS WELL.

15 AND AS YOU JUST HEARD, YOUR HONOR, FROM OPPOSING COUNSEL,
16 THESE THINGS ARE KEYED TO THE DEVICES.

17 TO ARGUE THAT GOOGLE IS NOT REQUIRED TO PRODUCE OVER
18 DEVICE -- ON THE BASIS OF DEVICE IDENTIFICATION WOULD BE
19 EQUIVALENT OF A PRODUCT LIABILITY CASE IN WHICH THE CAR
20 MANUFACTURERS SAYS BECAUSE SOMEBODY, YOU KNOW, MAY HAVE LENT
21 THE CAR IN WHICH SOMEBODY BOUGHT TO THE SPOUSE OR TO HIS OR HER
22 KIDS, THERE IS SOME TYPE OF RELEVANCE OR MERITS-BASED ARGUMENT
23 TO NOT ALLOW THE PLAINTIFFS TO BE ABLE TO CONDUCT DISCOVERY ON
24 THE RECORDS.

25 WE THINK THAT'S JUST ABSOLUTELY UNMERITED. SO ON THAT

1 BASIS IN TERMS OF WHAT WE'RE ASKING FOR, YOUR HONOR, IS THAT
2 WE'RE ASKING FOR DISCOVERY INTO BOTH THE STRUCTURED AND
3 UNSTRUCTURED DATA. WE BELIEVE THAT WE'RE ENTITLED TO THAT ON
4 BEHALF OF THE CLASS, AND WE ALSO BELIEVE THAT WE'RE ABSOLUTELY
5 ENTITLED TO THAT AS A MATTER OF RIGHT FOR THE SPECIFICALLY
6 NAMED PLAINTIFFS.

7 AND THEN I JUST WANT TO TOUCH -- I BELIEVE THIS ADDRESSES
8 BOTH P6 AND P3, YOUR HONOR.

9 BUT I ALSO WANT TO JUST OFFER UP THIS IDEA THAT AS THE
10 CALHOUN TEAM HAD MENTIONED, THIS IS -- ACTUALLY BOTH THE
11 STRUCTURED AND UNSTRUCTURED DATA ARE ALL ACTUALLY SEARCHABLE
12 USING GOOGLE'S ALREADY BUILT TOOLS INTERNAL AND ACCESSIBLE TO
13 THEIR EMPLOYEES.

14 I BELIEVE THAT THE CODE WORD FOR THIS TOOL IS CALLED
15 DREMEL -- THAT'S D-R-E-M-E-L -- DREMEL. I THINK IT'S -- I
16 THINK IT'S A ROUNDED SAW, YOUR HONOR. I THINK IT'S A PUN FOR
17 BASICALLY PRUNING DATA, YOU KNOW, BY DOING SEARCHES AND DOING
18 QUERIES.

19 SO I THINK ONE OF THE CONCEPTS IN WHICH WE'RE THINKING --
20 WHICH WE ARE NOT ASKING YOUR HONOR TO BASICALLY RULE TODAY --
21 IS THAT WE DO BELIEVE THAT OUR EXPERTS SHOULD BE ENTITLED TO
22 USE DREMEL AND ALSO TO SEE HOW [REDACTED] ACTUALLY STRUCTURES THE
23 DATA BECAUSE THAT WOULD BE VERY INSIGHTFUL IN TERMS OF HOW
24 GOOGLE ACTUALLY STORES AND USES THE DATA.

25 AND IF GOOGLE IS GOING TO MAKE THE ARGUMENT THAT DATA IS

1 CERTAINLY -- IS ACTUALLY SEGREGATED, WE'RE NOT REQUIRED, YOUR
2 HONOR, AS A MATTER OF LAW TO JUST SIMPLY TAKE THEM AT THEIR
3 WORD. WE'RE ACTUALLY ENTITLED TO TEST THAT. THEY CAN'T USE
4 THAT BOTH AS A SWORD AND AS A SHIELD. YOU KNOW, I THINK
5 WE'RE -- WE HAVE EXHIBITS TO SHOW YOU BASICALLY THIS DREMEL
6 TOOL IF YOUR HONOR WANTS TO SEE IT.

7 WE ALSO UNDERSTAND THE NEED FOR EFFICIENCY AND EFFICACY,
8 SO, YOU KNOW, I THINK OUR PROPOSAL IS PROBABLY GOING TO BE THAT
9 WE SET THIS ON FOR A SET OF BRIEFING, YOUR HONOR.

10 THE COURT: WELL, WE HAVE -- WE DID HAVE BRIEF
11 SEPARATE BRIEFING ON IT. THAT'S WHAT BROUGHT US HERE. AND AS
12 I UNDERSTOOD FROM -- AS I UNDERSTAND FROM PLAINTIFFS'
13 SUBMISSION IS THAT THE -- AT LEAST THE EXAMPLE SET FORTH IN THE
14 SUBMISSION IS TO THE EXTENT YOU'RE LOOKING FOR CLASS
15 IDENTIFICATION INFORMATION THAT WOULD IDENTIFY USERS WHO ARE IN
16 INCOGNITO MODE OR IN PRIVATE BROWSING AND ARE NOT LOGGED INTO
17 THE ACCOUNT, INTO THEIR GOOGLE ACCOUNT, THAT PLAINTIFFS HAVE
18 REPRESENTED THAT, WELL, WHEN YOU'RE IN INCOGNITO MODE, THE
19 X-CLIENT-DATA HEADER DOESN'T, DOESN'T TRANSFER, THAT FIELD IS
20 BLANK; AND THAT THERE ARE HEADER LOGS, AND THAT IF YOU LOOK AT
21 THE HEADER LOGS -- AND I ASSUME THAT THAT'S ONE OF YOUR
22 UNSTRUCTURED LOGS THAT YOU WERE REFERRING TO -- THAT THEN THE
23 FIELD FOR X-CLIENT-DATA WOULD BE EMPTY, SO THAT WOULD TELL YOU
24 WHO WAS ENGAGED IN PRIVATE BROWSING.

25 AND THEN WITH REGARDS TO WHO IS -- WHETHER OR NOT -- WELL,

1 SEPARATELY, WHETHER OR NOT A USER IS LOGGED IN, THAT THAT'S
2 WHERE THE SPECIAL COOKIES OR SPECIAL IDENTIFIERS COME INTO PLAY
3 IN THAT THERE ARE SPECIFIC COOKIES THAT ARE USED TO IDENTIFY
4 USERS WHEN THEY'RE NOT LOGGED INTO THEIR ACCOUNT. AND I THINK
5 YOU CITED ONE OF THE USER -- ONE OF THE GOOGLE DOCUMENTS THAT
6 DESCRIBES THAT FUNCTION.

7 SO -- AND I APPRECIATE THAT GOOGLE TAKES ISSUE
8 PARTICULARLY WITH REGARDS TO WHAT AN EMPTY X-DATA FIELD DOES OR
9 DOES NOT SHOW.

10 BUT FOR PURPOSES, MR. MAO, OF MY QUESTION TO YOU IS THAT,
11 ALL RIGHT, WELL, ASSUMING THAT'S TRUE, THAT THERE ARE THOSE
12 UNSTRUCTURED LOGS, WHAT IS IT THAT YOU'RE ASKING FOR FOR THE
13 NAMED PLAINTIFFS FOR A CERTAIN PERIOD OF TIME? WHAT THEIR --
14 HEADER LOGS SO YOU CAN IDENTIFY WHEN THEY'RE NOT -- EXCUSE
15 ME -- IDENTIFY WHEN THEY'RE IN PRIVATE BROWSING MODE?

16 AND THEN FOR THEIR COOKIES, WHAT, HISTORY OR SOMETHING
17 THAT WOULD SHOW THAT THEY WERE -- THEY WERE NOT LOGGED IN AT
18 THE TIME?

19 AND, AGAIN, I HEAR -- WE'LL GET TO GOOGLE'S ARGUMENT THAT
20 THE COOKIES DISAPPEAR IN A MINUTE, BUT WHAT IS IT THAT YOU'RE
21 ASKING FOR?

22 MR. MAO: THANK YOU, YOUR HONOR. THAT WAS HELPFUL IN
23 TERMS OF GUIDING HOW I RESPOND TO THE QUESTION.

24 SO I ACTUALLY BELIEVE THAT GOOGLE'S LOGGING BOTH FOR
25 STRUCTURE AND LESS STRUCTURED TABLES IS ACTUALLY IN PARALLEL.

1 SO WHAT THAT ACTUALLY MEANS, YOUR HONOR, IS THAT THEY ARE
2 BOTH THROWING THIS INTO -- SORRY FOR THE PUN -- THE ALPHABET
3 SOUP, RIGHT, THAT IS [REDACTED] AND THEN ON THE OTHER HAND,
4 THEY'RE ALSO PUTTING IT INTO SPECIFIC LOGS, AND THIS -- WE
5 BELIEVE THAT IS FIRST GOING TO THE GOOGLE AD MANAGER LOG.

6 SO WHAT DOES THIS MEAN? THIS MEANS THAT [REDACTED]
7 [REDACTED]
8 [REDACTED]
9 [REDACTED] OKAY?

10 AND THEN ON THE OTHER HAND WHAT YOU'RE GOING TO SEE IS
11 THAT [REDACTED]

12 [REDACTED] AND WE BELIEVE THAT THAT'S GOING TO BE
13 CORRELATED WITH I.D.'S OVER AT GOOGLE ANALYTICS, ON THE GOOGLE
14 ANALYTICS SIDE.

15 THE COURT: OKAY.

16 MR. MAO: SO WE WANT --

17 THE COURT: OKAY. SO FOR A NAMED PLAINTIFF, WHAT ARE
18 YOU ASKING FOR, OR WHAT ARE YOU LOOKING FOR IN RESPONSE TO
19 RFP 10?

20 MR. MAO: RIGHT. SO, YOUR HONOR, SPECIFICALLY IF
21 WE'RE TALKING REALLY MORE ABOUT P3 AS OPPOSED TO WHAT P6 MAY
22 EVENTUALLY LOOK LIKE -- SO P3 BEING PLAINTIFFS' DATA, RIGHT, P6
23 IS IDENTIFICATION OF THE CLASS MEMBERS IN RESPONSE TO RFP 10 --
24 SO IF WE'RE REALLY PRIMARILY TALKING ABOUT P3, WHAT WE'RE
25 LOOKING FOR, YOUR HONOR, IS SIMILAR TO CALHOUN, WHICH IS ALL OF

1 OUR -- ALL OF OUR PLAINTIFFS' STRUCTURED AND UNSTRUCTURED RAW
2 DATA, OKAY, IN ADDITION TO, TO SOME TYPE OF -- SOME TYPE OF
3 UNDERSTANDING AND EXPLANATION AS TO WHERE THAT DATA IS GOING
4 THEREAFTER.

5 THIS IS SPECIFICALLY FOR P3, YOUR HONOR.

6 THE COURT: UM-HUM.

7 MR. MAO: FOR P6, I BELIEVE THAT WE ARE AT LEAST
8 ENTITLED TO NOT ONLY THE RAW DATA, RIGHT, IN BOTH THE
9 STRUCTURED AND ALSO THE UNSTRUCTURED TABLES --

10 THE COURT: WAIT, LET'S NOT GET THERE YET.

11 MR. MAO: SORRY, YOUR HONOR.

12 THE COURT: LET'S STAY ON THIS, BECAUSE I UNDERSTOOD
13 THAT AS A COMPROMISE, OR AT LEAST AS A STARTING POINT PROPOSAL
14 FROM PLAINTIFFS WAS, IN RESPONSE TO RFP 10, WE'LL START WITH
15 THE NAMED PLAINTIFFS' INFORMATION.

16 MR. MAO: YES. SO IF YOU'RE SIMPLY TALKING ABOUT THE
17 STARTING POINT, YOUR HONOR, YES, THAT WOULD BE INCLUDED AS PART
18 OF THAT, AND WE WOULD LIKE PROBABLY FURTHER BRIEFING BECAUSE
19 WE -- NOT BECAUSE WE ARE -- WE WOULD NOT WANT YOUR HONOR TO
20 ORDER IT NOW -- I MEAN, IF YOUR HONOR WOULD ORDER IT NOW WE
21 WOULD PROBABLY WELCOME IT -- BUT WE DO BELIEVE THAT OUR EXPERTS
22 ARE ENTITLED TO LOOK AT HOW DATABASE STORES AND COLLECTS THIS
23 DATA BOTH [REDACTED] AND ALSO AT THE STRUCTURED
24 DATABASES LEVEL.

25 THE COURT: OKAY.

1 MR. MAO: BUT THERE'S NO REASON WHY --

2 THE COURT: OKAY. BUT MY QUESTION IS, WHAT ARE YOU
3 ASKING FOR NOW WITH REGARDS TO THAT FROM THE NAMED PLAINTIFFS,
4 FOR THE NAMED PLAINTIFFS IN RESPONSE TO RFP 10?

5 MR. MAO: RIGHT. SO BOTH THEIR STRUCTURED AND
6 UNSTRUCTURED DATA, AND I THINK WHEN YOU'RE TALKING ABOUT THE
7 UNSTRUCTURED, GOOGLE REFERS TO IT SOMETIMES AS THE
8 UNAUTHENTICATED DATA. I BELIEVE THAT'S WHAT OPPOSING COUNSEL
9 SAID IN THE PRIOR HEARING.

10 AND THEN WE WOULD LIKE TO UNDERSTAND SPECIFICALLY HOW THAT
11 DATA FLOWS WITHIN THE DIFFERENT PARTS OF GOOGLE.

12 THE COURT: SO WHAT DO YOU -- WHAT ARE YOU ASKING
13 FOR? WHEN YOU SAY HOW DOES IT FLOW, WHAT'S THE REQUEST
14 DIRECTED AT? WHAT ARE YOU EXPECTING TO GET?

15 MR. MAO: RIGHT. SO THAT IS SPECIFICALLY TIED TO
16 BROWSING ACTIVITY, YOUR HONOR, FOR EXAMPLE, RIGHT? SO, LIKE,
17 GOOGLE AD MANAGER, RIGHT, WHICH IS WHAT -- THE GOOGLE UNIT THAT
18 SERVICES AND SERVES ADS, WE BELIEVE THAT THERE IS GOING TO BE A
19 PAIRING OF THE ENTRY, RIGHT, FROM THE RAW -- FROM THE RAW
20 REFERRER HEADER WHERE IT SAYS, OH, MARK MAO IS AUTHENTICATED OR
21 UNAUTHENTICATED, RIGHT, THIS PERSON USING THIS DEVICE IS
22 VISITING AND BROWSING THIS WEBSITE, LET'S HIT HIM OR HER WITH A
23 SPECIFIC AD.

24 WE BELIEVE AT LEAST FOR THE PLAINTIFFS WE'RE ABSOLUTELY
25 ENTITLED TO SEE THAT AND WE'RE ENTITLED TO SEE HOW THAT FLOWS.

1 MS. BONN: AND IF I MAY, YOUR HONOR, FROM A PRACTICAL
2 PERSPECTIVE, I THINK WHAT WOULD HELP US GET TO THAT POINT
3 MR. MAO IS TALKING ABOUT IS THAT BECAUSE WE'RE ASKING FOR BOTH
4 THE STRUCTURED OR AUTHENTICATED DATA, AS WELL AS WHAT GOOGLE
5 CALLS UNAUTHENTICATED DATA THAT MAY JUST BE KEYED TO A DEVICE
6 IDENTIFIER, WHEN THEY PRODUCE THAT DATA TO US, WE WANT TO BE
7 ABLE TO TELL FROM THEIR PRODUCTION, WHAT SOURCES DID YOU PULL
8 EACH SET OF DATA FROM?

9 SO WE WANT TO BE ABLE TO KNOW, OKAY, WHAT LOG DID THIS SET
10 OF DATA COME FROM? WAS THIS SET OF DATA PULLED FROM [REDACTED] ?

11 SO IF WE JUST GET SORT OF A DUMP OF ALL THE DATA INTO A
12 SINGLE SPREADSHEET, EVEN THOUGH WE MAY HAVE ALL THE DATA, IT
13 WON'T GIVE US THE INSIGHT INTO WHAT SOURCES GOOGLE PULLED IT
14 FROM.

15 THE COURT: OKAY. ALL RIGHT. THAT'S HELPFUL. THANK
16 YOU.

17 ALL RIGHT. SO FROM -- WHO HAS THIS FOR GOOGLE?

18 MR. ANSORGE: I GET TO SPEAK TO IT, YOUR HONOR.

19 THE COURT: MR. ANSORGE.

20 OKAY. SO WE CAN START WITH THE AS -- AND I APPRECIATE
21 GOOGLE'S ARGUMENT, WHICH I LOOKED AT CAREFULLY AS SET FORTH IN
22 THE ADDITIONAL PAGE OF BRIEFING, AS TO -- YOU KNOW, JUST TO SUM
23 IT UP, THAT THESE DON'T -- THAT THESE DON'T LINK UP, JUST TO
24 NOT GIVE FULL CREDIT, BUT THAT'S -- THAT'S HOW I -- THAT'S MY
25 TAKE AWAY FROM THE ARGUMENT.

1 AND THAT WHEN YOU'RE LOOKING AT THESE VARIOUS COMPONENTS
2 LIKE THE X-CLIENT DATA FIELD IN A HEADER LOG, JUST BECAUSE
3 THAT'S EMPTY DOESN'T MEAN THAT THEY WERE IN INCOGNITO MODE
4 BECAUSE SOMETIMES THAT INFORMATION IS TRANSFERRED AND SOMETIMES
5 IT'S NOT.

6 I ALSO UNDERSTAND THAT -- THE ARGUMENT THAT WITH REGARDS
7 TO THE SPECIAL COOKIES OR IDENTIFIERS FOR -- THAT GOOGLE USES
8 WHEN SOMEONE IS BROWSING, BUT NOT LOGGED INTO THEIR ACCOUNT,
9 THAT THEN WHEN THAT BROWSING SESSION COMES TO AN END, GOOGLE
10 SAYS, WELL, THAT -- THEN THOSE COOKIES DISAPPEAR.

11 SO MY FIRST QUESTION IS -- I APPRECIATE THE STATEMENTS.
12 HAS THAT -- IS THAT GOOGLE'S POSITION? IS THERE ANY EVIDENCE
13 THAT SUPPORTS THOSE CONCLUSIONS YET IN THE RECORD, EITHER
14 THROUGH DEPOSITION OR RESPONSES?

15 MR. ANSORGE: YES, YOUR HONOR.

16 WE CAN POINT TO THE MONSEES DEPOSITION IN PARTICULAR
17 BECAUSE I THINK THE MOST IMPORTANT ISSUE HERE IS THE ONE THAT I
18 PHRASED EARLIER WHEN WE WERE TALKING AT THE CALHOUN HEARING, IS
19 THAT THE LOGS ARE INTERNALLY SEGREGATED BY WHETHER YOU'RE
20 LOGGED INTO A GOOGLE ACCOUNT OR AREN'T. SO GOOGLE GOES TO
21 GREAT EFFORTS TO MAKE SURE THAT THERE'S NO JOINS FROM ONE TO
22 THE OTHER.

23 NOW, FOR THE SEARCHING SITUATION THAT WE ARE IN, I THINK
24 IT MIGHT EVEN BE WORSE THAN WHAT YOU JUST DESCRIBED, BECAUSE IF
25 WE ARE NOW FOCUSSED ON JUST THE NAMED PLAINTIFFS, THE NAMED

1 PLAINTIFFS HAVE TO DATE ONLY PROVIDED US WITH THEIR GOOGLE
2 ACCOUNT INFORMATION IN TERMS OF USEFUL IDENTIFIERS THAT WE
3 COULD ACTUALLY USE TO QUERY THE DATA WITH.

4 THEY'VE TOLD US IN SWORN STATEMENTS THAT THEY DID NOT LOG
5 INTO THEIR ACCOUNTS IN PRIVATE BROWSING MODE.

6 SO JUST UNDER THE LOGIC THAT HAS BEEN PRESENTED TO US, TO
7 THE EXTENT I UNDERSTAND IT -- AND FRANKLY, I THINK THERE WAS A
8 LOT OF RAMPANT SPECULATION AND IT WAS NOT CLEAR TO ME ENTIRELY
9 WHAT MR. MAO WAS COMMUNICATING AT TIMES -- TO THE EXTENT I
10 UNDERSTAND IT, THERE WOULD BE NO PART OF THESE LOGS WHERE THERE
11 WOULD BE SOME PRIVATE BROWSING DATA FOR THESE PARTICULAR USERS
12 BECAUSE ALL WE HAVE ARE THE GOOGLE ACCOUNTS. THEY HAVEN'T
13 PRESERVED THE DEVICE IDENTIFIERS THAT CALHOUN HAS PRESERVED.

14 MOREOVER, THE DEVICE IDENTIFIERS --

15 THE COURT: LET ME JUST INTERJECT THERE, BECAUSE YOU
16 SAID TO IDENTIFY THE USERS -- AND MAYBE YOU WERE ANTICIPATING
17 MY QUESTION -- BUT CAN'T -- BUT YOU COULD IDENTIFY IT BY
18 DEVICE, IF NOT BY USER, BY DEVICE?

19 MR. ANSORGE: YES, YOUR HONOR.

20 AND HERE EARLIER WHEN WE WERE TALKING ABOUT THE [REDACTED]
21 [REDACTED] THOSE ARE COOKIES THAT ARE SET ON THE
22 BROWSER AND THAT'S WHAT WE'RE REFERRING TO WHEN WE'RE SAYING BY
23 THE DEVICE.

24 NOW, PLAINTIFFS HAVE PROVIDED IMEI NUMBERS TO US, WHICH
25 ARE BASICALLY HARDWARE IDENTIFIERS, AND IF YOU'LL PERMIT ME THE

1 ANALOGY, WHEN WE'RE TALKING ABOUT CARS, WHICH MR. MAO
2 REFERENCED EARLIER, THAT'S KIND OF LIKE A VIN NUMBER. THAT'S
3 SOMETHING THAT'S IN YOUR CAR. IF YOU SEE A CAR DRIVING BY,
4 YOU'RE NOT GOING TO KNOW WHAT THE VIN NUMBER IS.

5 THE SAME WITH THIS BROWSER INFORMATION. WHEN THIS
6 INFORMATION COMES INTO GOOGLE SERVICE, THEY'RE NOT GOING TO
7 HAVE THOSE HARDWARE IDENTIFIERS.

8 WHAT THEY DO HAVE ARE THE [REDACTED]
9 [REDACTED], BUT THOSE ARE LIKE TEMPORARY REGISTRATIONS OR LICENSE
10 PLATES THAT ARE RESET, TAKEN OFF, DELETED WITH EACH PRIVATE
11 BROWSING SESSION.

12 SO PLAINTIFFS ARE FINDING THEMSELVES IN A POSITION WHERE
13 THEY'RE QUITE DIFFERENTLY SITUATED FROM CALHOUN IN THIS ACTION
14 WHERE THERE'S NO ALLEGATIONS ABOUT LOGGED IN ACTIVITY. THAT IS
15 SOMETHING WE COULD QUERY AND WE COULD PRODUCE INFORMATION TO
16 THEM.

17 THEY HAVE NOT MAINTAINED OR PRESERVED ANY OF THE
18 IDENTIFIERS THAT WOULD BE REQUIRED TO ACTUALLY FIND ANY OF THE
19 PRIVATE BROWSING SESSIONS WHICH THEY ENGAGED IN, AND IT LEAVES
20 US IN A POSITION, WHEN WE'RE LOOKING BACK AT RFP 10 -- WHICH
21 I'M NOW RELIEVED THAT PLAINTIFFS ARE MOVING AWAY FROM A LITTLE
22 BIT -- WE SIMPLY DO NOT HAVE DOCUMENTS THAT WILL IDENTIFY
23 LOGGED OUT PRIVATE BROWSING ACTIVITY BY USERS WITH EITHER
24 ELECTRONIC OR PHYSICAL ADDRESSES. THAT'S NOT SOMETHING THAT
25 EXISTS AND WE DON'T THINK THAT WE SHOULD BE FORCED TO PRODUCE

1 IT IN RESPONSE TO THEIR THEORIES, YOUR HONOR.

2 THE COURT: WELL, BUT WHAT THE PLAINTIFFS ARE ASKING
3 FOR IS PIECES OF INFORMATION FROM DIFFERENT PLACES BECAUSE THEY
4 WANT TO SEE IF THEY CAN PIECE TOGETHER, BY COMBINATION OF THAT
5 INFORMATION, CLASS MEMBERS. AND THAT'S WHY -- I MEAN, IT SEEMS
6 TO ME THAT THEY HAVE A RIGHT TO TRY TO DO THAT WITH WHATEVER
7 INFORMATION YOU HAVE.

8 MR. ANSORGE: YES, AND I WOULDN'T WANT TO SPEAK
9 AGAINST THAT RIGHT.

10 I WAS JUST REFRAMING IT IN TERMS OF RFP 10 AND WHAT WE'VE
11 BEEN ASKED TO PRODUCE, WHICH WHAT WE'RE FOCUSSED ON HERE IS
12 INFORMATION THAT WILL ACTUALLY IDENTIFY THE CLASS MEMBERS, HAVE
13 THEIR ELECTRONIC ADDRESSES OR THEIR PHYSICAL ADDRESSES, AND
14 THAT'S NOT INFORMATION THAT WE MAINTAIN.

15 MOREOVER, IF PLAINTIFFS ARE CORRECT THAT THEY NEVER LOGGED
16 INTO THEIR GOOGLE ACCOUNTS WHILE THEY WERE IN PRIVATE BROWSING
17 MODE, ALL THEY'VE PRESERVED AND PROVIDED TO US ARE THEIR GOOGLE
18 ACCOUNTS, WHEN WE QUERY AND PULL THAT INFORMATION, WE WON'T BE
19 ABLE TO PULL ANY PRIVATE BROWSING DATA OR INFORMATION BECAUSE
20 THERE'S NOT AN OVERLAP. GOOGLE GOES TO GREAT LENGTHS TO MAKE
21 SURE THAT THE UNAUTHENTICATED DATA, AS IN E-LOG DATA, IS KEPT
22 SEPARATE FROM THE AUTHENTICATED DATA.

23 SO IT'S SOMETHING -- WE'RE HAPPY TO SIT DOWN AND QUERY,
24 AND THEY'VE RECENTLY COME TO US WITH ADDITIONAL REQUESTS AND WE
25 CAN SIT DOWN AND LOOK AT THOSE.

1 BUT JUST OVERALL IN TERMS OF THEORY IN THE BACKGROUND, WE
2 FELT LIKE THERE'S QUITE A LOT OF SPECULATION ON BEHALF OF
3 MR. MAO AND WE WANTED TO EXPLAIN TO YOU THAT THIS IS ACTUALLY
4 NOT SOMETHING THAT WE JUST HAVE OR CAN QUICKLY QUERY, NOR DO WE
5 THINK THEIR PROPOSED PATH IS ONE THAT WILL LEAD TO THAT
6 OUTCOME.

7 THE COURT: BUT THEY CAN TEST IT. THEY CAN TEST IT
8 AND THEY CAN MAKE OF THE DATA WHAT THEY WILL.

9 SO BACK TO YOU, MS. BONN OR MR. MAO, WHICH IS, SO WHAT IS
10 IT THAT YOU, THAT YOU -- WHAT IS THE REQUEST?

11 MS. BONN: HERE'S WHAT I'D LIKE TO START WITH, YOUR
12 HONOR, AND THEN I'LL TURN IT OVER TO MR. MAO IF HE WANTS TO ADD
13 ANYTHING.

14 BUT I THINK OUR POINT IS, LOOK, YOU CAN START WITH OUR
15 PLAINTIFFS' NAMED ACCOUNTS, BUT WHEN GOOGLE QUERIES THOSE
16 ACCOUNTS, I THINK THEY WILL SEE THAT THEY MAINTAIN DATA ACROSS
17 A NUMBER OF IDENTIFIERS, INCLUDING DEVICE IDENTIFIERS, AND THEN
18 GOOGLE HAS THE ABILITY TO GO INTO THEIR OTHER TOOLS AND THEIR
19 OTHER DATA SOURCES AND SEE WHAT OTHER DATA KEYS TO THE SAME
20 DEVICE IDENTIFIERS, WHETHER OR NOT IT WAS, QUOTE-UNQUOTE,
21 AUTHENTICATED OR SYNCED TO OUR CLIENTS' ACCOUNTS.

22 SO WHATEVER GOOGLE NEEDS TO DO TO FIGURE OUT THE
23 IDENTIFIERS ASSOCIATED WITH OUR NAMED PLAINTIFFS AND THEN PULL
24 DATA RELATED TO THEM IN WHATEVER SOURCE, WHETHER KEYED TO THEIR
25 GOOGLE ACCOUNT OR NOT, THAT'S REALLY WHAT OUR REQUEST IS, AND

1 THAT THE DATA BE PRODUCED TO US IN A FORMAT WHERE WE CAN TELL
2 WHAT SOURCE THEY PULLED THE DATA FROM.

3 AND I THINK, YOU KNOW, THAT'S GOING TO BE A STARTING PLACE
4 TO GET TO WHERE WE NEED TO ON THE CLASS-WIDE DATA. I THINK
5 WE'RE GOING TO WIND UP COMING BACK TO YOUR HONOR ASKING FOR US
6 TO BE ABLE TO INSPECT THEIR ACTUAL TOOLS BECAUSE I -- YOU KNOW,
7 WE'VE HEARD THE WORD SPECULATION BEING THROWN OUT, AND FRANKLY,
8 PART OF WHY THERE MAY BE SOME SPECULATION IS THEY HAVE ACCESS
9 TO THE TOOLS AND WE DON'T.

10 BUT THAT'S REALLY OUR REQUEST TO START WITH IS THEY SHOULD
11 START BY SEARCHING THE AUTHENTICATED DATA, THEY SHOULD IDENTIFY
12 ANY IDENTIFIERS THAT ARE ASSOCIATED WITH OUR NAMED PLAINTIFFS
13 THAT COULD BE USED TO SEARCH THEIR OTHER POOLS OF DATA THAT
14 THEY DEEM, QUOTE, UNAUTHENTICATED, AND WHETHER THAT'S A DEVICE
15 IDENTIFIER OR SOME OTHER IDENTIFIER, EVEN THOUGH GOOGLE MAY
16 HAVE INTERNAL POLICIES ABOUT WHAT THEY DO OR DON'T SEARCH, THAT
17 REALLY SHOULDN'T GOVERN WHAT'S DISCOVERABLE IN THE LITIGATION.

18 MR. BROOME: YOUR HONOR, IF I MAY BE HEARD BRIEFLY?

19 OH, SORRY, MARK.

20 MR. MAO: YEAH, IF I MAY JUST CLARIFY REAL QUICKLY,
21 YOUR HONOR.

22 YOUR HONOR, I DO THINK IT'S REALLY IMPORTANT TO LISTEN TO
23 THE CAREFULLY CHOSEN WORDS OF OPPOSING COUNSEL. THERE'S A LOT
24 OF TALK ABOUT NOT BEING ABLE TO IDENTIFY TO USERS AND NOT BEING
25 ABLE TO IDENTIFY TO PHYSICAL AND ELECTRONIC ADDRESSES, YOUR

1 HONOR.

2 BUT YOU ALSO HEARD THE CONCESSION THAT THIS IS TIED TO
3 DEVICES. SO IN OTHER WORDS, THEY'RE SAYING IT'S NOT
4 INDIVIDUALS AND IT'S NOT NECESSARILY AN I.P. OR A PHYSICAL
5 MAILING ADDRESS, BUT NOBODY IS TELLING YOU THAT IT'S NOT KEYED
6 TO THE DEVICES.

7 WHAT THEY'RE ACTUALLY, IN FACT, SAYING IS THAT THEY DON'T
8 HAVE RECORDS OF WHAT OUR SPECIFIC DEVICES ARE FROM US.

9 GOOGLE IS NOT SAYING THAT FROM THEIR OWN RECORDS THEY
10 CAN'T DERIVE WHO OUR PLAINTIFFS ARE. THEY'RE SAYING THAT THE
11 FIRST STEP NEEDS TO BE WE NEED TO IDENTIFY WHO THEY ARE.

12 BUT, YOUR HONOR, IF YOU TAKE A MOMENT BACK, A STEP BACK,
13 YOU CAN LOOK ANYWHERE ON THE PUBLIC RECORDS AND NOBODY TALKS
14 ABOUT [REDACTED]

15 [REDACTED] AND IF WE DO FURTHER BRIEFING ON THIS, YOUR
16 HONOR, YOU WILL ABSOLUTELY SEE THAT [REDACTED]

17 [REDACTED]
18 [REDACTED]
19 [REDACTED]
20 [REDACTED]

21 IN OTHER WORDS, IN TERMS OF GOOGLE MAKING MONEY OFF OF
22 THESE CONSUMERS, BEING ABLE TO SELL ADS AND AD SERVICES TO THE
23 CUSTOMERS, THEY'RE REPRESENTING TO THE CUSTOMERS THAT THEY HAVE
24 GREAT CERTAINTY THAT THESE UNAUTHENTICATED, RIGHT, SEGMENTS,
25 USERS, AND CONSUMERS ARE, IN FACT, WHO GOOGLE TELLS THEM THAT

1 THEY ARE.

2 SO, YOUR HONOR, I THINK YOU'RE CERTAINLY RIGHT TO SAY THAT
3 WE ARE NOT ONLY -- I MEAN, NOT ONLY SHOULD WE BE ENTITLED TO
4 START DISCOVERY ON THIS, WE THINK, YOUR HONOR, THAT YOUR ORDER
5 SHOULD JUST SAY THAT GOOGLE IS REQUIRED TO PROVIDE PLAINTIFFS
6 ALL THE DATA REGARDING THEIR DEVICES, AUTHENTICATED OR
7 UNAUTHENTICATED.

8 THE WORD "DEVICES" IS SOMETHING IN WHICH GOOGLE'S
9 ATTORNEYS HAVE ALREADY ADMITTED THAT THEIR RECORDS ARE KEYED
10 TO, AND WHETHER THAT INCLUDES USERS AND/OR PHYSICAL AND
11 ELECTRONIC ADDRESSES IN SOME WAYS IS, IS JUST ANOTHER PART OF
12 THE DATA THAT'S APPENDED AND KEYED TO DEVICE DATA AND WHICH
13 THEY DO NOT ADMIT -- SORRY -- THEY DO NOT DENY THAT THEY
14 ACTUALLY HAVE.

15 AND HERE'S THE MOST IMPORTANT THING, YOUR HONOR: NOWHERE
16 IN THEIR LAST TWO OR THREE HOURS OF DISCUSSION HAVE THEY
17 ACTUALLY SAID THAT THEY WERE NOT TRACKING PEOPLE IN PRIVATE
18 MODE. THEY CONCEDE THEY'RE TRACKING PEOPLE IN PRIVATE MODE,
19 THEY'RE JUST BENDING OVER BACKWARDS TO MAKE SURE THAT WE CANNOT
20 GET OUR OWN PLAINTIFFS' DATA IN TERMS OF WHAT THEY WERE DOING
21 AND HOW GOOGLE WAS TRACKING THEM IN THEIR MOST PRIVATE MOMENTS.

22 THAT'S JUST SIMPLY NOT THE TEST FOR DISCOVERY, YOUR HONOR.

23 THE COURT: ALL RIGHT.

24 MR. BROOME: MAY I BE HEARD BRIEFLY, YOUR HONOR?

25 THE COURT: BRIEFLY.

1 MR. BROOME: YEAH. WE HAVE NO PROBLEM WITH DISCOVERY
2 ON THESE ISSUES AND WE'VE HAD A LOT OF BACK AND FORTH WITH THEM
3 AND WE'VE EXPLAINED OUR POSITION. BUT WE CAN'T PRODUCE WHAT WE
4 DON'T HAVE.

5 AND YOUR HONOR ASKED A QUESTION, CAN GOOGLE TIE THESE
6 PRIVATE BROWSING SESSIONS TO PLAINTIFFS' DEVICES? AND THE
7 ANSWER TO THAT IS NO. WE DON'T -- THE COOKIES THAT ARE USED TO
8 TIE THAT DATA TOGETHER -- AND MR. ANSORGE WILL CORRECT ME IF
9 I'M WRONG -- THEY'RE DELETED AT THE END OF THE SESSION, THEY'RE
10 DELETED FROM THE PLAINTIFFS' BROWSER, AND WE DO NOT HAVE THE
11 INFORMATION TO IDENTIFY THE PLAINTIFFS' PRIVATE BROWSING
12 SESSIONS.

13 I KNOW MR. MAO DOESN'T LIKE THAT, BUT THAT IS THE REALITY.
14 AND WE'RE HAPPY TO HAVE DISCOVERY ON THIS ISSUE. THAT'S
15 WHAT WE PROPOSED IN OUR COMPROMISE.

16 THE COURT: OKAY. THEN HERE'S WHAT WE'RE GOING TO DO
17 WITH REGARDS TO REQUEST -- I GUESS IT'S RFP 18 AND RFP 10,
18 WHICH IS PRODUCTION OF PLAINTIFFS' DATA, AS WELL AS PRODUCTION
19 OF DATA TO IDENTIFY CLASS MEMBERS: WE'RE TAKING THESE
20 TOGETHER, AND AS A FIRST STEP IN RESPONDING TO THAT, WE WILL BE
21 FOCUSSED ON NAMED PLAINTIFFS, ON THE NAMED PLAINTIFFS.

22 AND ANY PRODUCTION THAT GOOGLE HAS MADE SO FAR WILL BE
23 SUPPLEMENTED TO BE SURE THAT, FOR THE NAMED PLAINTIFFS, THAT
24 ANY AUTHENTICATED DATA THAT GOOGLE HAS IS PRODUCED, AS WELL AS
25 ANY -- AUTHENTICATED DATA, ANY IDENTIFIERS -- THAT IS, WHAT ARE

1 THE IDENTIFIERS FOR THAT DATA? IS IT USER? IS IT DEVICE? --
2 AS WELL AS ANY UNAUTHENTICATED DATA TO THE EXTENT THERE IS ANY.

3 SO GOOGLE WILL PRODUCE THAT INFORMATION AND THEN THE
4 PLAINTIFFS CAN REVIEW THAT AND IF YOU -- WHAT IS AND ISN'T
5 THERE, AND THEN IF YOU -- I WILL ENTERTAIN A REQUEST FOR A
6 FOCUSSED 30(B)(6) DEPOSITION ON THE IDENTIFICATION, ON THE USER
7 IDENTIFICATION ISSUE.

8 MS. BONN: THANK YOU, YOUR HONOR.

9 THE COURT: ALL RIGHT. SO I WANT THAT INFORMATION --
10 IT'S A PRETTY LIMITED NUMBER OF PEOPLE, SO LET'S GET THAT
11 PRODUCTION UNDERWAY AND TO BE COMPLETED BY -- LET'S DO THAT BY
12 MAY 12, AND THEN THE PARTIES WILL MEET AND CONFER -- PLAINTIFFS
13 CAN REVIEW THAT, THE PARTIES CAN MEET AND CONFER FOR A
14 SUBMISSION BACK TO ME ON THE 20TH IN ANTICIPATION OF
15 RECONVENING IN FRONT OF ME ON THE 26TH.

16 MR. SCHAPIRO: AND, YOUR HONOR, THAT MAKES PERFECT
17 SENSE.

18 CAN I JUST RESPOND TO ONE THING THAT MR. MAO SAID? AND I
19 WILL TAKE 90 SECONDS AND THEN MOVE ON.

20 HE SAID HE HAS NOT HEARD GOOGLE SAY DURING THESE THREE
21 HOURS THAT WE DO NOT TRACK PEOPLE IN PRIVATE BROWSING MODE.

22 I'M GOING TO SAY, WE DON'T TRACK PEOPLE IN PRIVATE
23 BROWSING MODE.

24 NOW, AS EVERYONE KNOWS AND AS WE'VE EXPLAINED MANY TIMES
25 IN THIS CASE, IF YOU'RE IN PRIVATE BROWSING MODE AND YOU HOP ON

1 AND YOU DO A SEARCH AND YOU GO TO THREE WEBSITES, GOOGLE WILL
2 KNOW THAT SOME USER OR DEVICE WENT TO THOSE THREE WEBSITES AND
3 THEN YOU ENDED THE SESSION AND THEN IT'S GONE. SO SOMETHING
4 WENT TO THESE THREE WEBSITES.

5 SO, A, WE DON'T DO THAT.

6 B, WE HAVE A BIT OF A HAND TIED BEHIND OUR BACK HERE
7 BECAUSE MR. MAO HAS BEEN SAYING HE BELIEVES THIS, HE BELIEVES
8 THAT, THAT THERE'S SOMETHING SINISTER ABOUT THE WORDS TWICE --
9 A [REDACTED] IS BAKED TWICE OR THAT [REDACTED] IS A REPOSITORY OF ALL
10 KINDS OF THINGS.

11 ONE OF THE CHALLENGES WE FACE HERE IS THAT THIS STUFF
12 IS -- OUR TEXT CHAIN GOING ON HERE IS, LIKE, WHAT IS HE TALKING
13 ABOUT? AND WE'RE ALL TRYING TO GUESS. WE HAVE NO IDEA HERE.

14 SO I WOULD INVITE PLAINTIFFS IN PARTICULAR, BEFORE WE END
15 UP WITH WHERE WE WERE IN CALHOUN, WHICH IS AN ILL-BOUNDED
16 30(B)(6) WHERE PEOPLE ARE TALKING PAST EACH OTHER, TO SERVE
17 SOME WRITTEN DISCOVERY, AND THEY CAN ASK US, IS THERE SOMETHING
18 SPECIAL ABOUT THE FACT THAT A [REDACTED] IS BAKED TWICE, OR
19 WHAT'S KEPT IN [REDACTED]?

20 WE'LL ANSWER THAT, AND I THINK IT WILL BE MORE EFFICIENT
21 FOR EVERYONE THAN SPINNING IN WHAT ARE, FRANKLY,
22 CONSPIRACY-MINDED, UNFOUNDED THEORIES BASED ON SPECULATION OR
23 NAMES OF COOKIES.

24 THAT'S ALL I'VE GOT.

25 THE COURT: ALL RIGHT. PLAINTIFFS WILL -- EXCUSE

1 ME -- DEFENDANTS WILL MAKE THE PRODUCTION AND THEN THE PARTIES
2 WILL MEET AND CONFER, GET YOUR SUBMISSION TO ME FOR FURTHER --
3 IF THERE'S NEED, WHICH I CERTAINLY ANTICIPATE THERE WILL BE --
4 FOR FURTHER DISCOVERY ON THIS ISSUE.

5 BUT I DO EXPECT THE PARTIES, AS I SAY, TO MEET AND CONFER
6 TO TRY TO ADDRESS THAT IN A CONSTRUCTIVE WAY.

7 ALL RIGHT. LET'S TURN TO THE OTHER DISPUTE -- THE NEXT
8 DISPUTE THAT WAS -- THAT HAD SUBSEQUENT BRIEFING -- LET ME GET
9 MY NOTES HERE IN FRONT OF ME -- AND THIS WAS ON THE SEARCH
10 TERMS FOR THE CUSTODIANS, AND I'LL GIVE YOU MY RULINGS ON THIS.

11 I DID REVIEW IT. I REVIEWED THE PREVIOUS ESI ORDERS WITH
12 REGARDS TO BOTH CUSTODIANS AND DOCUMENTS.

13 WITH REGARDS TO THE SEARCH TERMS FOR THE GOOGLE SELECTED
14 CUSTODIANS, THE NUMBERS FROM THE PARTIES ARE KIND OF ALL OVER,
15 SO IT WASN'T QUITE CLEAR TO ME HOW MANY TERMS HAVE BEEN RUN OR
16 THAT GOOGLE HAS IDENTIFIED THAT IT IS WILLING TO RUN. AT ONE
17 POINT IT APPEARED THAT IT HAD IDENTIFIED 92 TERMS, OR HAD
18 PRODUCED -- OR SEARCHES, I SHOULD SAY -- HAD PROPOSED 100.

19 SO I'M -- IT'S NOT QUITE CLEAR TO ME WHAT IS THE STATUS
20 WITH REGARDS TO CUSTODIAN SEARCHES FOR THE CUSTODIAN -- EXCUSE
21 ME -- FOR THE GOOGLE SELECTED CUSTODIAN.

22 SO LET ME HEAR FROM GOOGLE FIRST. WHO HAS THIS ONE?

23 MS. CRAWFORD: I HAVE THIS ONE, YOUR HONOR. THANK
24 YOU FOR THE QUESTION.

25 TO DATE, GOOGLE HAS AGREED TO RUN OVER 135 SEARCH TERMS

1 FOR THE GOOGLE SELECTED CUSTODIANS, AND IT'S AGREED -- ALTHOUGH
2 YOU HAVEN'T ASKED -- GOOGLE HAS AGREED TO RUN SIX OR SEVEN
3 SEARCHES FOR THE ADDITIONAL CUSTODIANS ORDERED AT THE LAST
4 HEARING.

5 THE COURT: OKAY.

6 MS. CRAWFORD: WE ARE CONTINUING TO RECEIVE REQUESTS
7 FOR ADDITIONAL SEARCH TERMS.

8 THE COURT: QUESTION -- QUESTION, MS. CRAWFORD. THE
9 135, THOSE ARE TERMS, LIKE SOME OF THEM HAVE MULTIPLE
10 WORDS/LINKS/SYNTAX, ET CETERA?

11 MS. CRAWFORD: ABSOLUTELY, YOUR HONOR.

12 THESE ARE COMPLEX TERMS, BOOLEAN SEARCHES, YES.

13 SO IF YOU ADDED EACH PERMUTATION, THAT NUMBER WOULD
14 CERTAINLY BALLOON.

15 THE COURT: OKAY. SO YOU HAVE RUN 135, IS THAT
16 RIGHT? OR YOU ARE RUNNING USING 135?

17 MS. CRAWFORD: SLIGHTLY NORTH OF THAT. I THINK THE
18 NUMBER IS CLOSER TO 140, 141.

19 THE COURT: OKAY. AND THEN SEPARATE -- AND I
20 APPRECIATE YOU PULLED OUT THE SMALLER, UNIQUE SEARCHES FOR THE
21 ADDITIONAL CUSTODIANS THAT I HAD PREVIOUSLY ADDED.

22 MS. CRAWFORD: YES, YOUR HONOR.

23 THE COURT: SO WHO HAS THIS FOR PLAINTIFFS, PLEASE?

24 MR. RICHARDSON: I DO, YOUR HONOR. THIS IS
25 BEKO RICHARDSON FROM BOIES SCHILLER.

1 THE COURT: ALL RIGHT. AND, MR. RICHARDSON, IS THAT
2 CORRECT? BECAUSE THE PLAINTIFFS SEEM TO SUGGEST THAT IT WAS
3 SOME OTHER NUMBER, SO I'M CONFUSED.

4 MR. RICHARDSON: YEAH, AND I APOLOGIZE FOR THE
5 CONFUSION.

6 HOW THIS PLAYED OUT IS BACK IN JANUARY, WE PROPOSED A SET
7 OF SEARCH TERMS WHICH GOOGLE REJECTED OUT OF HAND. GOOGLE
8 PROPOSED A MUCH MORE RESTRICTIVE SET OF SEARCHES THAT WERE A
9 COMBINATION OF PROXIMITY SEARCHES.

10 WE TOOK GOOGLE'S PROPOSAL AND TRIED TO MODIFY THAT SO THAT
11 WE CAN WORK WITHIN THE CONFINES OF WHAT GOOGLE WAS PROPOSING.

12 GOOGLE CONTINUED TO REJECT WHAT WE THOUGHT WERE SOME KEY
13 TERMS, SUCH AS INCOGNITO. THAT OBVIOUSLY COVERS A NUMBER OF
14 THE LONGER, MORE COMPLEX TERMS.

15 BUT I DO THINK THAT WE HAVE REACHED AGREEMENT ON SOME
16 SUBSTANTIAL NUMBER OF SEARCHES, WHICH WERE THE ONES THAT GOOGLE
17 PROPOSED, AND THEN GOOGLE'S COMPROMISED ON SOME OF THE ONES
18 THAT WE PROPOSED.

19 SO WHERE WE'VE ENDED UP IS HAVING MET AND CONFERRED MANY
20 TIMES OVER MANY MONTHS HERE, WE HAVE 25 SEARCHES IN DISPUTE ON
21 THE TEN GOOGLE CUSTODIANS, AND THE SIX DISPUTED SEARCHES FOR
22 THE COURT ORDERED CUSTODIANS.

23 THE COURT: OKAY. ALL RIGHT. AND THOSE ARE THE
24 TERMS THAT ARE SET FORTH IN THE PROPOSED ORDER?

25 MR. RICHARDSON: THAT'S CORRECT, YOUR HONOR.

1 THE COURT: YOU CAN IMAGINE HOW HAPPY I WAS TO SEE MY
2 PREVIOUS ORDER WHERE I REMINDED MYSELF THAT I TOLD YOU IF YOU
3 WERE DISPUTING SEARCH TERMS, YOU COULD BRING THEM BACK TO ME
4 AND I WOULD LOOK AT THEM. SO -- AND SO I HAVE.

5 AND I HAVE THE FOLLOWING ADJUSTMENTS, AND I'M READING OFF
6 OF THE PLAINTIFFS' PROPOSED ORDER AS FOLLOWS: INCOGNITO, I
7 APPRECIATE THAT'S SOMEWHAT OF A UNIQUE WORD. IT'S OBVIOUSLY
8 USED IN MANY -- IN MANY TERMS WITH LIMITATIONS, LIKE TERM 5, 9,
9 10, IT GOES ON. AND IT -- I AM GOING TO ALLOW INCOGNITO TO BE
10 RUN.

11 THE SECOND TERM, BROWSE ASTERISK WITHIN TWO OF PRIVATE,
12 THAT NEEDS FURTHER LIMITATION.

13 THE THIRD TERM, WHICH BEGINS WITH PRIVACY POLICY AND THEN
14 HAS A SERIES OF ORS, MY QUESTION IS -- AND IT'S BEEN A WHILE
15 SINCE I'VE ACTUALLY CONSTRUCTED A SEARCH TERM -- BUT IS THAT --
16 WOULD THAT -- I WAS THINKING, OH, THAT SHOULD BE "AND" AS YOU
17 WANT PRIVACY POLICY AND THEN SOME COMBINATION OF THESE OTHER
18 PHRASES, BUT MAYBE I'M JUST NOT UNDERSTANDING WHAT THAT SEARCH
19 TERM WOULD ACCOMPLISH.

20 MR. RICHARDSON, I'LL HEAR FROM YOU.

21 MR. RICHARDSON: YES, YOUR HONOR, THIS IS
22 BEKO RICHARDSON.

23 SO THAT SEARCH 3 WAS MEANT TO ADDRESS A NUMBER OF CORE
24 TERMS AND PHRASES THAT APPEAR IN GOOGLE'S POLICY. SO TO
25 INCLUDE IT AS AN "AND" WOULD PERHAPS YIELD ALL OF THE COPIES OF

1 GOOGLE'S POLICY, GOOGLE'S PRIVACY POLICY, BUT IT WOULD NOT
2 YIELD THE E-MAILS WHERE PEOPLE ARE COMMENTING ON GOOGLE'S
3 PRIVACY POLICY AND WHETHER OR NOT GOOGLE ACTUALLY HAS OBTAINED
4 CONSENT, WHETHER GOOGLE HAS ACTUALLY DISCLOSED ANY OF THE
5 PRACTICES AT ISSUE IN THIS CASE. WE DON'T THINK GOOGLE HAS.

6 GOOGLE HAS ASSERTED A CONSENT DEFENSE, AND SO THIS SEARCH
7 NUMBER 3 IS SUPPOSED TO OBTAIN E-MAILS AND OTHER DOCUMENTS THAT
8 CONCERN GOOGLE'S RELIANCE ON ITS PRIVACY POLICY FOR PURPOSES OF
9 THAT DEFENSE.

10 THE COURT: PRIVACY POLICY ON ITS OWN LIKE THAT AS AN
11 IDENTIFYING TERM, THAT JUST CAUSES CONCERN. I THINK THAT
12 NUMBER 3 WILL BENEFIT FROM SOME FURTHER LIMITATION.

13 MS. CRAWFORD: YOUR HONOR, IF I MAY BRIEFLY?

14 THE COURT: YES, MS. CRAWFORD.

15 MS. CRAWFORD: IF THE PARTIES ARE TO MEET AND CONFER
16 ON THESE ISSUES, WHICH WE'RE OBVIOUSLY HAPPY TO PARTICIPATE IN,
17 I WOULD JUST WANT TO NOTE FOR PLAINTIFFS' COUNSEL THAT THERE
18 ARE ALREADY A NUMBER OF SEARCHES THAT GOOGLE IS RUNNING THAT
19 CONTAIN THE PRECISE VERBIAGE FROM GOOGLE'S PRIVACY POLICY THAT
20 PLAINTIFFS CLAIM ARE AT ISSUE IN THIS CASE.

21 AND SO A NUMBER OF SEARCH STRINGS CONTAIN THE VERY SAME
22 LANGUAGE THAT PLAINTIFFS ARE SEEKING TO GET AT THROUGH THE USE
23 OF THIS TERM.

24 SIMILAR WITH -- AND I KNOW THE COURT'S ORDERED THAT
25 INCOGNITO BE RUN, BUT FOR THE SEARCHES GOOGLE HAS AGREED TO

1 RUN, INCOGNITO APPEARS 50 TIMES WITHIN THE CONTEXT OF OTHER
2 SEARCH TERMS.

3 PRIVATE WITHIN TWO OF BROWSE APPEARS 46 TIMES WITHIN THE
4 LONGER LIST OF 140-SOME ODD TERMS.

5 SO THERE'S SUBSTANTIAL OVERLAP BETWEEN WHAT PLAINTIFFS ARE
6 SEEKING FROM YOUR HONOR NOW AND THE 140 TERMS THAT GOOGLE HAS
7 ALREADY AGREED TO RUN AS THE RESULT OF MANY OTHER TERMS.

8 THE COURT: I APPRECIATE THAT, MS. CRAWFORD, AND I
9 APOLOGIZE FOR INTERJECTING, BUT I WANT TO GET THROUGH A LITTLE
10 BIT MORE OF THIS TODAY.

11 I -- WHICH IS WHY I'M REQUIRING THAT THEY BE FURTHER
12 LIMITED WITH THE EXCEPTION OF INCOGNITO.

13 AND IT MAY BE THAT PLAINTIFFS, WHEN YOU TURN TO ADDRESS
14 FURTHER LIMITATIONS ON THE TERMS AT 2, 3, AND SOON TO BE 4,
15 THAT YOU FIND THAT THEY ARE, IN FACT, ALREADY COVERED, THAT
16 THERE'S REALLY NOWHERE ELSE TO GO, THAT'S WHY YOU HAVE THEM ON
17 HERE AS SOLOS, IN WHICH CASE THEY CAN COME OFF BECAUSE THEY'RE
18 TOO BROAD AS IS.

19 AND THAT LEADS ME TO THE SIN RASTRO -- I'M PROBABLY NOT
20 SAYING THAT RIGHT, SIN RASTRO? -- TERM WHICH, AGAIN, NEEDS
21 FURTHER LIMITATION. I APPRECIATE THAT'S A -- THAT WAS AN
22 INITIATIVE, YOU GOT TO PULL THAT IN.

23 THOSE ARE MY ADJUSTMENTS TO THE SEARCH TERMS. THE OTHERS
24 ARE, AGAIN, MORE COMPLEX THAT FOLLOW AND I'LL ALLOW THEM.

25 ALL RIGHT. WITH REGARDS TO THE ADDITIONAL CUSTODIANS,

1 I --

2 MS. CRAWFORD: OH, YOUR HONOR, IF I MAY BRIEFLY?

3 THE COURT: NO, MS. CRAWFORD. I'M SORRY. I NEED TO
4 MOVE ON. LET'S JUST GO TO THE CUSTODIANS. OKAY? I WILL BE
5 BACK. I'LL BE BACK.

6 BUT WITH REGARDS TO THE ADDITIONAL CUSTODIANS THAT I HAD
7 IDENTIFIED IN THE PREVIOUS ORDER, I HAD ALLOWED THE PARTIES --
8 I HAD ALLOWED TEN SEARCH TERMS. IT LOOKS LIKE THE PARTIES HAVE
9 AGREED ON SIX, AND A COUPLE OF THESE NEED FURTHER LIMITATION AS
10 WELL.

11 AND THE -- WE GOT TO ADDING THESE FOLKS WITH GOOD CAUSE
12 BECAUSE WE LIMITED TIMEFRAMES AND WE LIMITED SEARCH TERMS. SO
13 THESE -- THE ADDITIONAL FOLKS THAT I ADDED WILL NOT BE PART OF
14 THE LARGER SEARCHES. THEY WILL HAVE THIS LIMITED SEARCH.

15 AND, AGAIN, I WILL, FOR THEM, ALLOW INCOGNITO, BUT THE
16 SECOND TERM, PRIVATE BROWSE, AND THE FOURTH TERM, PRIVACY
17 POLICY, NEED FURTHER LIMITATIONS.

18 ALL RIGHT. THOSE ARE MY RULINGS ON THE CUSTODIANS UNLESS
19 I OVERLOOKED AN OPEN ISSUE.

20 MS. CRAWFORD, I'M SORRY TO RUSH YOU, BUT WE'RE IN A RUSH.

21 MS. CRAWFORD: THAT'S OKAY, YOUR HONOR.

22 I THINK THAT THERE'S ONE CLARIFICATION THAT WOULD BE
23 USEFUL AS IT RELATES TO SEARCH TERMS, PARTICULARLY BECAUSE
24 GOOGLE'S PROPOSED ORDER POINTED OUT THAT THERE WERE CERTAIN
25 TERMS IN PLAINTIFFS' PROPOSED ORDER, I.E., NUMBERS 18 THROUGH

1 25, WHERE THERE IS A DISPUTE AS TO THE PROPRIETY OF THE
2 UNDERLYING RFP'S AND, THUS, SEARCHES 18 THROUGH 25 ARE NOT
3 PROPERLY BEFORE THE COURT GIVEN GOOGLE'S OUTSTANDING RELEVANCE
4 AND BURDEN OBJECTIONS.

5 AND SO WHAT WE'VE ASKED THAT THE COURT DO, AND IT SEEMS AS
6 THOUGH AS RECENTLY AS A FEW DAYS AGO, PLAINTIFFS WERE AMENABLE
7 TO STRIKING THESE TERMS FROM THEIR PROPOSED ORDER SO THAT THE
8 PARTIES CAN EXHAUST THE MEET AND CONFER PROCESS, AGAIN, ON THE
9 ISSUES THAT UNDERLIE THESE PARTICULAR SEARCH TERMS.

10 THE COURT: ALL RIGHT. YOU COMPLETE YOUR MEET AND
11 CONFER ON TERMS 18 THROUGH 25 WITHIN THE NEXT WEEK AND GIVE ME
12 A STATUS ON MAY 6TH.

13 MS. CRAWFORD: THANK YOU, YOUR HONOR.

14 MR. RICHARDSON: YOUR HONOR, BEKO RICHARDSON.

15 JUST ONE QUICK REQUEST. WE HAVE BEEN NEGOTIATING WITHOUT
16 HIT COUNTS. GOOGLE HAS REFUSED TO PROVIDE US ANY HIT COUNTS
17 TIED TO ANY OF THESE SEARCHES DESPITE OUR REPEATED REQUESTS,
18 AND WE WOULD JUST ASK THAT GOOGLE BE ORDERED TO PROVIDE THOSE.

19 THE COURT: PROVIDE THE HIT COUNTS.

20 MS. CRAWFORD: HAPPY TO PROVIDE THOSE. THANK YOU,
21 YOUR HONOR.

22 THE COURT: GREAT.

23 OKAY. SO NOW WE'RE BACK INTO THE CHART. LET'S JUST SEE
24 WHERE WE ARE. I'M ON CHART A OF YOUR SUBMISSION, AND A NUMBER
25 OF THESE WERE NOT YET READY FOR RESOLUTION.

1 AS FOR P3, THE PARTIES ARE TO MEET AND CONFER, GIVE ME A
2 STATUS BY MAY 6TH.

3 AS TO P4, THE SERVER LOGS, I THINK THAT'S TIED BACK WITH
4 CALHOUN AND THE ISSUE THERE, AND WE WILL PROCEED IN THE SAME
5 WAY AS I FIGURE OUT WHAT THAT IS.

6 WITH REGARDS TO P7, WHICH IS WHETHER PEOPLE ARE LOGGED IN
7 OR LOGGED OUT, AGAIN, IT SOUNDS LIKE THE PARTIES ARE CONTINUING
8 THEIR DISCUSSIONS. THERE MAY OR MAY NOT BE A DISPUTE. YOU ALL
9 NEED TO GET -- NEED SEVERAL MEET AND CONFER SESSIONS IN THE
10 COMING DAYS, AND I WANT A STATUS REPORT ON MAY 6TH.

11 BUT I DO EXPECT EACH AND EVERY ONE OF THESE ISSUES THAT
12 I'VE IDENTIFIED FOR STATUS ON THE 6TH TO HAVE BEEN PRECEDED BY
13 SERIOUS SLEEVES-ROLLED-UP MEET AND CONFER EFFORT.

14 WITH REGARDS TO P9, AGAIN, A LITTLE BIT FURTHER DISPUTE.

15 I DO SEE THE INFORMATION ON CHART B. THE PARTIES ARE TO
16 MEET AND CONFER AND GIVE ME A STATUS ON MAY 6TH.

17 AND WITH REGARDS TO P10, GOOGLE'S TIMELINE FOR PRODUCING
18 CUSTODIAL DOCUMENTS, I WANT, ESPECIALLY IN THIS CASE WHERE
19 WE'RE RUNNING UP AGAINST THE CLOSE OF FACT DISCOVERY, I WANT A
20 DETAILED PRODUCTION TIMELINE BY MAY 6TH. ALL RIGHT? THAT'S A
21 COMMITMENT TO COMPLETE THE PRODUCTION.

22 THE ROLLING PRODUCTIONS ON TWO WEEKS CADENCE, I'M VERY
23 CONCERNED THAT THAT WILL NOT GET US THERE. AND I AM LOOKING AT
24 AN ULTIMATE DEADLINE ON PRODUCTION OF NO LATER THAN JUNE 18, NO
25 LATER THAN JUNE 18, AND I WANT GOOGLE TO LOOK AT THAT AND GET

1 ME, GET ME THAT TIMELINE ON MAY 6TH.

2 FOR P11, THIS IS PRODUCTION OF -- EXCUSE ME -- PRODUCTION
3 OF GOOGLE'S BOARD DOCUMENTS, AND HERE'S WHAT -- YES, I'M GOING
4 TO ALLOW THE TWO AND A HALF YEAR PERIOD AND THE PARTIES ARE TO
5 IDENTIFY APPROPRIATE SEARCH TERMS AND A DATE CERTAIN FOR
6 PRODUCTION THAT WILL BE NO LATER THAN MAY 28TH, NO LATER THAN
7 MAY 28TH FOR A DATE CERTAIN FOR PRODUCTION.

8 P12 IS NOT YET RIPE, BUT IT'S BEEN HANGING AROUND THERE
9 AND THE PARTIES ARE GOING TO MEET AND CONFER AND GIVE ME STATUS
10 ON MAY 6TH.

11 AND ON EACH OF THESE, WHEN I'M ASKING FOR STATUS, I WANT
12 TO KNOW WHAT PROGRESS HAS BEEN MADE. I REALLY WANT THE
13 ISSUES -- THEY'RE EITHER CLOSED OR YOU'RE GOING TO NEED TO GET
14 THEM TO ME FOR BRIEFING, IN WHICH CASE THEY'LL BE ON THE
15 MAY CYCLE FOR BRIEFS AND HEARING ON MAY 26TH.

16 OKAY. WITH REGARDS TO P13, INTERROGATORIES 5 THROUGH 7,
17 COMPOUND INTERROGATORIES ARE A CURSE ON BOTH YOUR HOUSES. SO
18 GOOGLE, LET'S ANSWER THEM. ALL RIGHT? JUST ANSWER THE
19 INTERROGATORIES 5 THROUGH 7.

20 I WILL OFTEN SUSTAIN OBJECTIONS ON COMPOUND, BUT HERE
21 THERE'S ENOUGH ON BOTH SIDES THAT THESE WILL GET ANSWERED.

22 WITH REGARDS TO THE DISPUTES IDENTIFIED BY GOOGLE, AND
23 TURNING TO CHART C, IF I CAN MAKE THE TRANSLATION -- LET'S SEE.
24 WHERE ARE YOU ON THE SECOND AMENDED COMPLAINT IN THIS CASE?

25 FOR PLAINTIFFS, PLEASE?

1 MS. BONN: I THINK RYAN MCGEE IS GOING TO ADDRESS
2 THESE ISSUES.

3 MR. MCGEE: GOOD AFTERNOON, JUDGE.

4 THE SECOND AMENDED COMPLAINT WAS FILED BY STIPULATION
5 EARLIER THIS MONTH, AND I BELIEVE JUDGE KOH RULED THAT IT WOULD
6 BE SO ENTERED.

7 THE COURT: OKAY. I SAW THE STIPULATION. I DON'T
8 THINK I APPRECIATED THAT THAT WAS THE OPERATIVE, THE OPERATIVE
9 ENTRY. THAT'S FINE THEN.

10 WITH REGARDS TO ANY FURTHER -- OKAY. THAT'S RIGHT.

11 SO IN RESPONSE TO THIS, PLAINTIFFS HAVE ACKNOWLEDGED
12 FURTHER AMENDMENTS. YOU WERE WAITING ON THE -- IT SOUNDED LIKE
13 THE SECOND AMENDED COMPLAINT MIGHT HELP INFORM THAT PROCESS.
14 SO I WANT, AGAIN, THE PARTIES TO MEET AND CONFER AND HAVE A
15 DATE CERTAIN FOR THOSE AMENDED RESPONSES, A DATE CERTAIN.
16 SUPPLY THAT TO ME ON THE 6TH.

17 MR. MCGEE: YES, JUDGE.

18 THE COURT: WHAT ELSE DO WE HAVE?

19 WE HAVE GOOGLE INTERROGATORIES 1, 2, 4, AND 5, AND THE
20 PLAINTIFFS' RESPONSES. ARE THE -- HAVE THE RESPONSES BEEN
21 VERIFIED? DO YOU HAVE VERIFIED RESPONSES FROM THE PLAINTIFFS?

22 WHO'S GOT THIS ONE?

23 MR. MCGEE: SORRY, JUDGE. THAT'S RYAN MCGEE.

24 I KNOW THAT WE SERVED VERIFIED RESPONSES TO THE SECOND
25 INTERROGATORIES. I'M NOT SURE THEY'VE BEEN DONE FOR THIS ONE.

1 THERE'S BEEN A LOT OF COMPLICATIONS WITH CORONA, BUT I CAN
2 CERTAINLY GET THOSE CERTIFIED, OR VERIFIED. EXCUSE ME.

3 THE COURT: IF THE -- I LOOKED AT THIS. IF THE
4 PLAINTIFFS, ANY PLAINTIFF OR PLAINTIFFS, DO NOT KNOW WHICH
5 VERSIONS THEY REVIEWED OR THE DATES THAT THEY REVIEWED THEM,
6 THEY NEED TO STATE THAT CLEARLY. THAT NEEDS TO BE CLEARLY
7 STATED FOR THE RECORD, AND THE RESPONSES NEED TO BE VERIFIED.

8 MR. BROOME: YOUR HONOR, MAY I BE HEARD BRIEFLY ON
9 THIS ISSUE?

10 THE COURT: YES.

11 MR. BROOME: I THINK THERE'S A LARGER CONCERN HERE,
12 WHICH IS THAT WE SERVED INDIVIDUALIZED -- WELL, WE SERVED RFA'S
13 AND ROGS ON PLAINTIFFS AND EXPECTED INDIVIDUALIZED RESPONSES.

14 AND I WILL GIVE THE CALHOUN PLAINTIFFS CREDIT IN THIS
15 REGARD IN THAT WHEN WE SERVED SIMILAR ROGS ON THEM, THEY DID
16 PROVIDE -- THEY DID DO THE WORK. THEY SAT DOWN WITH THEIR
17 PLAINTIFFS AND SAID, WHAT DID YOU REVIEW? AND WE GOT BACK
18 DIFFERENT ANSWERS AND THAT'S WHAT WE WOULD EXPECT.

19 AND HERE WE'RE NOT GETTING ANSWERS FROM THE PLAINTIFFS. I
20 FEAR WHAT WE'RE GETTING IS THE ANSWERS THE LAWYERS HAVE
21 DRAFTED. I MEAN, THEY'RE ALL IDENTICAL IN TERMS OF WHICH
22 STATEMENTS THEY REVIEWED.

23 AND I THINK THAT IT'S NOT JUST A CREDIBILITY ISSUE, IT'S
24 ACTUALLY A DISCOVERY DEFICIENCY BECAUSE I THINK THEY ARE UNDER
25 AN OBLIGATION TO DO WHAT THE CALHOUN PLAINTIFFS DID.

1 THE COURT: I AGREE, MR. BROOME.

2 BUT THE ANSWERS ARE WHAT THEY ARE AND THAT'S WHAT -- THAT
3 WAS -- THAT'S PLAINTIFFS' REPRESENTATION. AND THAT'S WHY I'M
4 GOING TO REQUIRE THAT THE RESPONSES BE VERIFIED, AND THEY DO
5 NEED TO BE CLARIFIED AS TO WHAT THEY -- IF THEY DON'T KNOW OR
6 CAN'T REMEMBER WHAT THEY LOOKED AT AND WHEN THEY LOOKED AT IT,
7 IT NEEDS TO CLEARLY STATE THAT.

8 THAT MAY LEAD TO FURTHER INDIVIDUALIZATION, BUT IT MAY
9 NOT, AND THAT'S -- BUT YOU WILL HAVE VERIFIED RESPONSES AS TO
10 WHAT THEY DID AND WHAT THEY DID NOT DO.

11 MR. BROOME: THANK YOU, YOUR HONOR.

12 THE COURT: ALL RIGHT. FOR INTERROGATORY NUMBER 2,
13 THERE IS AN AMENDMENT. PLAINTIFFS SAY THAT THEY WILL AMEND
14 THEIR RESPONSES AND THAT'LL BE DONE BY MAY 6TH.

15 WITH REGARDS TO INTERROGATORY NUMBER 4, THAT'S COVERED BY
16 MY PREVIOUS -- OR WAS ADDRESSED IN MY CALHOUN RULING WITH
17 REGARDS TO PROVIDING A LIST OF THE TEN APPLICATIONS WHICH CAN
18 BE REDACTED, BUT THE CATEGORY OF THE APPLICATION IDENTIFIED.

19 MR. MCGEE: AND, YOUR HONOR --

20 THE COURT: THAT'LL START THAT PROCESS.

21 MR. MCGEE: JUST FOR CLARIFICATION, I UNDERSTAND THAT
22 WAS CALHOUN.

23 BUT I THINK THE INTERROGATORY NUMBER 4 CONCERNED WEBSITES.

24 THE COURT: AH, YES, IT DID. WELL, IT SAID WEBSITES
25 AND APPLICATIONS.

1 SO IT CAN INCLUDE A LIST OF THEIR MOST FREQUENT -- TO THE
2 EXTENT THE PLAINTIFFS CAN ENUMERATE OR IDENTIFY FOR THEMSELVES
3 THE TEN APPLICATIONS AND TEN WEBSITES THAT THEY IDENTIFY --
4 THAT THEY VISIT MOST OFTEN, THEY CAN DO THAT. THEY CAN REDACT
5 IT IF IT'S PERSONAL INFORMATION.

6 AND THEN GOOGLE CAN TAKE THAT INFORMATION AND FOLLOW UP
7 WITH SPECIFIC INQUIRIES OR RAISE ANY OTHER CONCERNS.

8 AND I THINK THAT GETS US UP TO INTERROGATORY NUMBER 5,
9 WHICH IS SIMILARLY A REQUEST FOR EVERY TIME PRIVATE BROWSING
10 MODE IS USED, AND I APPRECIATE IT'S, IT'S FRUSTRATING, BUT
11 THAT'S WHAT THE ANSWER IS. IT SOUNDS LIKE -- WAIT, MAYBE I'M
12 NOT READING MY NOTE CORRECTLY. EXCUSE ME JUST A MINUTE.

13 MR. BROOME, IS THIS YOURS FOR GOOGLE? IS THIS THE SAME
14 ISSUE, THAT IT'S THE SAME RESPONSES? I SEEM TO HAVE DROPPED A
15 PAGE.

16 MR. BROOME: YEAH, I THINK IT'S SIMILAR, YOUR HONOR.

17 I THINK WE WERE AT -- WE RECOGNIZE THAT THEY'RE NOT GOING
18 TO BE ABLE TO RECALL AND RECREATE EVERY PRIVATE BROWSING
19 SESSION. BUT, YOU KNOW, WE DON'T HAVE THAT INFORMATION, AS
20 WE'VE DISCUSSED, AND I THINK WE'RE GOING TO GET SOME MORE
21 DISCOVERY AND PROBABLY SOME ARGUMENT ON THAT.

22 BUT WHAT WE'VE ASKED IS FOR THEM TO, YOU KNOW, AT LEAST
23 SIT DOWN WITH THEIR CLIENTS AND SAY, HEY, CAN YOU RECALL
24 ANYTHING ABOUT ANY PRIVATE BROWSING SESSIONS AND AT LEAST
25 PROVIDE US THAT DATA.

1 BUT I THINK THAT YOUR PRIOR ORDER ABOUT IDENTIFYING THE
2 TOP TEN APPLICATIONS AND TOP TEN WEBSITES THAT THEY VISITED IN
3 PRIVATE BROWSING WILL PROBABLY GET US THERE.

4 THE COURT: OKAY.

5 MR. MCGEE: YOUR HONOR, JUST TO CLARIFY, I KNOW YOU
6 APPRECIATE BREVITY.

7 WE DID PROVIDE INDIVIDUALIZED ANSWERS FOR THIS, AND THAT'S
8 WHY THE REDACTING ON THE PUBLIC VERSION LOOKS DIFFERENT. WE
9 PROVIDED VERY SPECIFIC WEBSITES THEY WENT TO, AND ALSO GENERAL
10 CATEGORIES.

11 SO I TAKE ISSUE WITH ANY ACCUSATION OF VERBATIM OR, YOU
12 KNOW, LAWYER --

13 THE COURT: ALL RIGHT. I'M NOT GOING TO RULE ON
14 ANYTHING ON THAT, SO THANK YOU, MR. MCGEE.

15 LET'S BE SURE THAT GOOGLE GETS VERIFIED RESPONSES. I WANT
16 THOSE RESPONSES TO BE VERIFIED.

17 MR. MCGEE: YES, JUDGE.

18 MR. BROOME: I BELIEVE I CAN ONLY SEE ONE WEBSITE
19 ACTUALLY IDENTIFIED, BUT IT SOUNDS LIKE WE'RE GOING TO GET SOME
20 MORE, SO WE'RE FINE WITH THAT.

21 THE COURT: OKAY. FOR RFP NUMBER 2 -- WHICH DISPUTE
22 AM I ON HERE, 2 -- THIS IS RFP NUMBER 2, THE PARTIES NEED TO
23 COMPLETE YOUR MEET AND CONFER BY MAY 6TH.

24 AND THAT APPLIES TO RFP 3 AS WELL.

25 WITH REGARDS TO RFP NUMBER 6, THE RESPONSES -- LET'S SEE,

1 WHERE'S MY NOTE HERE?

2 THE PLAINTIFFS, AS I UNDERSTAND IT, SAY THAT THEY DO
3 IDENTIFY THE DOCUMENTS, OR THEY REFERENCE THE DISCLOSURES THAT
4 THEY REVIEWED, AND MY COMMENT IS THAT THE RESPONSES NEED TO BE
5 SURE TO IDENTIFY THE DOCUMENTS. AND WHETHER THAT'S USING
6 EXHIBITS TO THE COMPLAINT OR SOME OTHER DOCUMENTS, BUT THERE
7 NEEDS TO BE NOT JUST A GENERAL STATEMENT, BUT DOCUMENTS, TO THE
8 EXTENT THAT THEY CAN RECALL, THAT THEY REVIEWED, AND THEN THOSE
9 RESPONSES NEED TO BE VERIFIED.

10 MR. BROOME: THAT WORKS FOR US, YOUR HONOR.

11 COULD I MAKE ONE GLOBAL COMMENT? WE HAVE DEFINED CERTAIN
12 DOCUMENTS IN OUR REQUESTS AND WE THINK THEY'RE PRETTY
13 STRAIGHTFORWARD BECAUSE WE PROVIDED LINKS TO THEM.

14 SO, FOR EXAMPLE, THE PRIVACY POLICY WE DEFINED AND WE
15 PROVIDED A LINK TO THE PRIVACY POLICY, AND OF COURSE IF YOU GO
16 TO GOOGLE'S PRIVACY POLICY, ALL OF THE ARCHIVED VERSIONS ARE
17 THERE FOR THE USER.

18 THEY HAVE REDEFINED PRIVACY POLICY AS INCLUDING THE
19 INCOGNITO SCREEN AND, IN FACT, IT'S NOT EVEN CLEAR TO ME IF
20 THEY ARE INCLUDING THE ACTUAL PRIVACY POLICY.

21 THEY REFER TO CERTAIN GOOGLE STATEMENTS -- REPRESENTATIONS
22 ABOUT USERS BEING IN CONTROL, STATEMENTS THAT ARE OUTLINED IN
23 PARAGRAPHS 2 AND 42 OF THE COMPLAINT, AND THE INCOGNITO NOTICE,
24 AND THEY'VE ALL STATED THAT THEY BELIEVE THAT IS THE PRIVACY
25 POLICY AND THAT'S JUST -- YOU KNOW, THAT'S JUST NOT WHAT IT IS.

1 WE HAVE A SIMILAR ISSUE WITH OTHER DOCUMENTS, LIKE THE
2 TERMS OF SERVICE, THE PRIVACY NOTICE, ET CETERA, AND IT WOULD
3 BE HELPFUL IF THEY COULD ACTUALLY RESPOND BY IDENTIFYING --
4 WITH RESPECT TO THE ACTUAL DOCUMENTS AND NOT THEIR, YOU KNOW,
5 THEIR UNDERSTANDING OF THOSE DOCUMENTS.

6 THE COURT: TO THE EXTENT THE PLAINTIFFS CAN IDENTIFY
7 SPECIFIC DOCUMENTS, THOSE IDENTIFICATIONS NEED TO BE PROVIDED.
8 THAT'S WHAT I -- THAT'S WHAT I INTENDED TO COMMUNICATE.

9 MR. BROOME: THANK YOU, YOUR HONOR.

10 THE COURT: AND THEY MAY HAVE LOOKED AT OTHER
11 DOCUMENTS, AND THAT'S FINE, OR THE INCOGNITO SCREEN, AND THEY
12 CAN IDENTIFY THAT AS WELL.

13 BUT THEY DO HAVE TO ANSWER THE QUESTION THAT'S BEEN
14 ASKED --

15 MR. BROOME: THANK YOU.

16 THE COURT: -- WITH A VERIFIED RESPONSE.

17 FOR RFP NUMBER 7, I THINK THAT WE HAVE COVERED THAT WITH
18 OUR IDENTIFICATION OF THE TEN WEBSITES OR -- EXCUSE ME -- WITH
19 THE TEN WEBSITES AS WE DID FOR INTERROGATORY NUMBER 4.

20 AND I THINK THAT ALL OF THE OTHER REQUESTS WERE NOT YET
21 RIPE WHERE THE PARTIES OR THE COURT -- UNLESS I'M MISSING
22 ONE -- FOR D4, THE DISPUTE AT D4 FOR THE LONG SET OF RFA'S, I
23 WANT A STATUS ON THAT BY MAY 6TH.

24 AND SIMILARLY FOR D5, THE RESPONSES TO INTERROGATORIES 7,
25 9, AND 10, I WANT A STATUS REPORT ON MAY 6TH.

1 ALL RIGHT. AND THAT IS WHAT I HAVE IN FRONT OF ME FOR
2 BROWN.

3 ANYTHING ELSE FROM PLAINTIFFS IN BROWN?

4 MS. BONN: I DON'T THINK SO, YOUR HONOR. THANK YOU.

5 THE COURT: ANYTHING ELSE FROM DEFENDANTS IN BROWN?

6 MR. SCHAPIRO: NO, YOUR HONOR.

7 THE COURT: OKAY. THANK YOU.

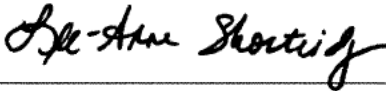
8 ALL RIGHT.

9 (THE PROCEEDINGS WERE CONCLUDED AT 4:34 P.M.)
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CERTIFICATE OF REPORTER

I, THE UNDERSIGNED OFFICIAL COURT REPORTER OF THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF CALIFORNIA, 280 SOUTH FIRST STREET, SAN JOSE, CALIFORNIA, DO HEREBY CERTIFY:

THAT THE FOREGOING TRANSCRIPT, CERTIFICATE INCLUSIVE, IS A CORRECT TRANSCRIPT FROM THE RECORD OF ZOOM PROCEEDINGS IN THE ABOVE-ENTITLED MATTER.



LEE-ANNE SHORTRIDGE, CSR, CRR
CERTIFICATE NUMBER 9595

DATED: MAY 3, 2021